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September 16, 2022

By ECF

Hon. Ona T. Wang
United States Magistrate Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: Jane Smith v. Annucci, *et al.*,
21-CV-01715 (RA)(OTW) [rel. 17-CV-07954 (RA)(OTW)]

Dear Judge Wang:

We submit this joint status letter in accordance with the Court's August 22, 2022 Order to provide the status of discovery and to address the parties' ongoing discovery disputes. The parties met and conferred to discuss these issues on September 9 and have been communicating by email on a continuing basis.

General Discovery Progress and Status

Both parties have now provided responses and objections to each other's initial document requests, and Plaintiffs have served a second set of document requests, to which Defendants are in the process of responding. Defendants were not able to respond to Plaintiffs' initial document requests by the May 1, 2022 deadline initially proposed in the March 3, 2022 Case Management Plan (Docket No. 137) because responsive information was not as readily available to Defendants as anticipated. Many of Plaintiffs' requests sought information not generally exchanged by DOCCS absent a court order or requests for policies and protocols that required a larger than expected search on behalf of DOCCS. As a result, it took longer than anticipated for DOCCS to provide these materials to our office. Nonetheless, Defendants complied with this Court's most recent order to provide responses and objections to these requests by July 1, 2022. Both parties have also now served initial interrogatories.

Request to Inspect Bedford Hills Correctional Facility ("BHCF")

The parties have tentatively agreed on a site inspection of Bedford Hills Correctional Facility on September 28, 2022. As part of that visit, Plaintiffs intend to photograph certain locations of fixed video surveillance systems within the relevant areas of the facility. Defendants have agreed to permit inspection and photography, provided Plaintiffs supply Defendants with a

list of those guests intending to visit and the specifications of the equipment Plaintiffs intend to bring. Plaintiffs have agreed not to video record footage during their visit.

Investigative Records Related to Sexual Assaults at BHCF

Defendants complied with the Court's order to provide Plaintiffs with the number of unsubstantiated sexual misconduct allegations made against the Officer Defendants in this matter. Following this disclosure, Plaintiffs requested investigative reports for these investigations and indicated they may seek the full OSI files as well. Defendants have spoken to DOCCS about Plaintiffs' request and are expecting feedback from DOCCS's general counsel in the upcoming days. Defendants suggested to Plaintiffs in their September 9 meet and confer that the Office was not opposed to a compromise on these records, including potentially producing the closing reports for at least one of the Officer Defendants. The parties are continuing to negotiate this issue. Defendants contend that any agreement must be carefully reviewed considering Plaintiffs' request implicates certain incidents that occurred subsequent to the incidents at issue in this case and may not be officially closed by DOCCS' Office of Special Investigation ("OSI") despite having rendered determinations into the underlying allegations of the Officer Defendants.

Officer Defendants' Personnel Files

In June, Defendants exchanged the disciplinary history and applicable criminal history portions of the Officer Defendants' personnel files. After this disclosure, Plaintiffs renewed their request for the entirety of these Defendants' personnel files except for psychological evaluations. In the September 9 meet and confer, Plaintiffs agreed to limit their request to the portion of the files pertaining to probationary period evaluation reports, performance evaluation rating forms, employee status change and promotion letters, as well as information pertaining to whether salary advances or promotions were either withheld from any of the Officer Defendants due to being the subject of an OSI investigation into sexual misconduct or else not withheld from any of the Officer Defendants despite being the subject of any such investigation. The parties are continuing to negotiate this request.

Deposition Schedule

Defendants have served Notices of Deposition on Plaintiffs, seeking examinations before trial for Plaintiff Smith on October 20, 2022, and Plaintiff Doe on October 26, 2022. Plaintiffs intend to serve deposition notices on certain Defendants and other parties shortly. The parties have agreed to work together to find dates for the various depositions that are mutually agreeable.

ESI Production

Defendants produced responsive ESI documents in the custody of Defendants Tardibuono and Cumberbatch on September 14, 2022. Defendants are resolved to exchange the remaining ESI on a rolling basis, but acknowledge the volume of the ESI to be reviewed makes it unlikely this exchange will be completed within the next six weeks as the total number of documents to be searched is over 150,000. Nonetheless, Defendants endeavor to produce as much ESI as quickly as possible and have invested considerable resources into doing so, including the hiring of ten contract attorneys to assist the review process, and utilizing this Office's Practice Technologies Group on a daily basis to help manage our review software and assist in ensuring compliance with the ESI protocol executed with Plaintiffs (e-filed as Docket No. 158).

Projected New Fact Discovery Deadline

The parties propose **March 1, 2023** as their new deadline for the close of fact discovery considering that, despite their best efforts, depositions remain outstanding, the bulk of ESI has not yet been exchanged, and considering Plaintiffs have requested both supplemental responses to their initial document demands as well as responses to a second set of document demands.

Respectfully,

/s/ Andrew Blancato

Assistant Attorney General Andrew Blancato
Attorney for Defendants

/s/ David M. Stuart

David M. Stuart
Attorney for Plaintiffs

VIA: CM/ECF

The Honorable Ona T. Wang
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